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OFFICE OF PETITIONS

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In re Patent No. 7,655,002
Issued: February 2, 2010
Application No. 10/750,789
Filed: January 2, 2004
Dkt. No.: 12212/39

: DECISION ON APPLICATION FOR
: PATENT TERM ADJUSTMENT and
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION
:

This is a decision on the request for review of patent term adjustment timely filed on March 2, 2010. This matter is being properly treated under 37 CFR 1.705(d).

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.**

The above-identified application matured into U.S. Pat. No. 7,655,002 on February 2, 2010. The patent issued with a patent term adjustment of 679 days. The instant application for patent term adjustment was timely filed March 2, 2010.

The calculation of adjustment has been carefully reviewed, along with the arguments presented by patentees. Herein follows the calculation of adjustment.

The patent is entitled to an overall adjustment of 1244 days.

The patent is entitled to an adjustment of 933 days pursuant to 37 CFR 1.702(a)(1).

The patent is entitled to an adjustment of 31 days pursuant to 37 CFR 1.702(a)(2).

The application is entitled to an adjustment of 518 days pursuant to 37 CFR 1.702(b), from January 3, 2007 to June 3, 2008. As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on January 3, 2007 and ends on June 3, 2008, the day before the RCE was filed, and not June 4, 2008, the day of filing of the RCE. See, 35 U.S.C. 154(b)(1)(B)(i)..

The period of adjustment under 37 CFR 1.702(b) does not include the number of days, if any, in the period beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31 of this title and ending on the date of the

last decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145, or on the date of mailing of either an action under 35 U.S.C.132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first, if the appeal did not result in a decision by the Board of Patent Appeals and Interferences. See, 37 CFR 1.702(b)(4) and 1.703(b)(4).

Accordingly, the period of adjustment of 518 days under 37 CFR 1.702(b) does not include 27 days, from May 8, 2008, the date that the Notice of Appeal was filed, to June 3, 2008, the day before the date that the RCE was mailed. Supra.

The period of applicant delay totals 211 days.

The patent term adjustment is subject to a reduction of 105 days pursuant to 37 CFR 1.704(c)(8) in connection with the supplemental reply filed February 4, 2008.

The patent term adjustment is subject to a reduction of 106 days pursuant to 37 CFR 1.704(c)(10) in connection with the post-allowance submission filed October 20, 2009.

In view thereof, the patent is entitled to an overall adjustment of 1244 days (964 days under § 1.702(a) + 518 days under § 1.702(b) – 27 days under § 1.702(b)(4) – 211 days of applicant delay under § 1.704)).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136. See 37 CFR 1.323(a)(4).

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges the submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by 1244 days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,655,002

DATED : February 2, 2010

DRAFT

INVENTOR(S) : Myers

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 679 days

Delete the phrase "by 679 days" and insert – by 1244 days--